

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BRUCE MICHAEL GUILMETTE,

Petitioner,

v.

CASE NO. 05-CV-72646-DT  
HONORABLE VICTORIA A. ROBERTS

CAROL HOWES,

Respondent.

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**ORDER DENYING PETITIONER'S SECOND  
MOTION TO AMEND THE HABEAS PETITION**

Pending before the Court is petitioner Bruce Michael Guilmette's second motion to amend his habeas corpus petition. The initial habeas corpus petition challenged Petitioner's state conviction for first-degree home invasion on two grounds: ineffective assistance of trial counsel and ineffective assistance of appellate counsel. Petitioner alleged that his trial attorney failed to (1) conduct a proper investigation of footprints found at the victims' home and (2) challenge the prosecution's proofs as to the elements of first-degree home invasion. Petitioner argued that his appellate attorney should have raised a claim about trial counsel on direct appeal from Petitioner's convictions. The Court subsequently appointed counsel for Petitioner, who now seeks to amend the habeas petition with the following new issue:

The photographic line-up of Mr. Guilmette was a suggestive identification that violated Mr. Guilmette's due process rights.

Petitioner attempted to raise this issue in a prior motion to amend the habeas petition. The Court denied the first motion to amend the habeas petition because the facts supporting Petitioner's proposed new claim regarding the photographic line-up differed in time and type

from the other habeas claims. The Court ruled that the proposed new claim did not relate back in time to the original habeas corpus petition and, therefore, was untimely under *Mayle v. Felix*, 545 U.S. 644 (2005). Petitioner has not challenged that ruling, nor demonstrated that the Court erred when it denied his first motion for leave to amend the habeas petition. Accordingly, the Court **DENIES** Petitioner's second motion to amend the habeas petition [Doc. 39, May 13, 2008] to the extent that the amended petition and supporting brief raise a new issue.

The Court nevertheless accepts Petitioner's amended petition and supporting brief for their supplemental facts and arguments in support of Petitioner's initial claims about trial and appellate counsel. Respondent may file an answer to Petitioner's amended brief filed on May 13, 2008, provided that she does so within thirty days of the date of this order. The Court will then adjudicate Petitioner's claims without further notice.

S/Victoria A. Roberts

Victoria A. Roberts  
United States District Judge

Dated: June 5, 2008

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on June 5, 2008.

s/Carol A. Pinegar  
Deputy Clerk